



BOARD OF COMMISSIONERS

1 S. Main St., 9th Floor
Mount Clemens, Michigan 48043
586-469-5125 FAX 586-469-5993
macombcountymi.gov/boardofcommissioners

HEALTH SERVICES COMMITTEE

THURSDAY, OCTOBER 2, 2008

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Adoption of Agenda, **AS AMENDED, TO INCLUDE #9A**
4. Approval of Minutes dated June 12, 2008 (previously distributed)
5. Public Participation
6. Report from Water Quality Board (mailed)
7. Prosecutor's Environmental Unit Report for September, 2008 (mailed)
8. S.W.I.M. Team Report for August, 2008 (mailed)
9. Progress Report Re: Animal Shelter (mailed)
- 9a. Budget and Parameters for Waterway Cleanup (attached)
(referred from 9-23-08 Budget Committee meeting)
10. Presentation Proposals on Martha T. Berry
11. New Business
12. Public Participation
13. Adjournment

MEMBERS: DeSaele-Chair, Camphous-Peterson-Vice-Chair, Rocca, J. Flynn, Roberts, Torrice, Switalski, Drolet, Rengert, Mijac, Brdak, Gielegghem, Doherty and Crouchman (ex-officio)

MACOMB COUNTY BOARD OF COMMISSIONERS

William A. Crouchman
District 23
Chairman

Dana Camphous-Peterson
District 18
Vice-Chair

Leonard Haggerty
District 21
Sergeant-At-Arms

Andrey Duzyj - District 1
Marvin E. Sauger - District 2
Phillip A. DiMaria - District 3
Jon M. Switalski - District 4
Susan L. Doherty - District 5

Joan Flynn - District 6
Sue Rocca - District 7
David Flynn - District 8
Robert Mijac - District 9
Phillis DeSaele - District 10

Ed Szczepanski - District 11
Peter J. Lund - District 12
Don Brown - District 13
Brian Brdak - District 14
Keith Rengert - District 15

Carey Torrice - District 16
Ed Bruley - District 17
Paul Gielegghem - District 19
Kathy Tocco - District 20

Betty Slindle - District 22
Sarah Roberts - District 24
Kathy D. Vosburg - District 25
Leon Drolet - District 26

RESOLUTION NO. _____

MEETING DATE: _____

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO: Receive and file a report of the Macomb County Water Quality Board

INTRODUCED BY: Commissioner Philis DeSaele, Chairperson, Health Services Committee

The Macomb County Water Quality Board met on September 9, 2008. Citizens from Harrison Township appeared before the Board voicing their concerns relative to the use of creosote-treated poles in construction of a residence on Church Street. After discussion, the Board unanimously passed a resolution to be sent to Harrison Township and other lake front communities suggesting an ordinance be adopted to take effect immediately creating a moratorium on the use of pilings with creosote in residential applications. Such an ordinance would allow time for further study on their use.

A report and demonstration was given on the Drinking Water Monitoring Project. Monitoring will be carried out from Lake Huron to Lake Erie.

The status of the Illicit Discharge Elimination Program (IDEP) was discussed with a representative of the City of Warren and the Macomb County Public Works Office.

The Board supported the Michigan Association of Counties (MAC) Environmental Platform regarding phosphorous.

Mr. J. Russell LaBarge reported on the presentation of the Blue Ribbon Commission Report to the Chairman of the Board of Commissioners, William Crouchman and to the Tri-County Summit.

COMMITTEE / MEETING DATE

Health Services – October 2, 2008

RECYCLABLE PAPER

RESOLUTION NO. _____

FULL BOARD MEETING DATE: 10/9/08

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO receive and file the Status Report on the Prosecutor's Environmental Unit for September, 2008, as submitted by Luanne Laemmerman

INTRODUCED BY: Philis DeSaele, Chairman, Health Services Committee

COMMITTEE/MEETING DATE
Health Services 10/2/08

PROSECUTOR'S ENVIRONMENTAL UNIT REPORT

Submitted by Luanne Laemmerman

September 2008

CIVIL CASES:

See table attached.

C.K. Corp v City of Centerline and Macomb County Health Department – working with counsel for Centerline and Corporate Counsel on defense strategy. Macomb County Circuit Court. Corporation Counsel filed Motion for Summary Disposition on 8/25/08.

CRIMINAL CASES:

People v Flansburgh – Defendant paid third installment of restitution to Macomb County Lake/River Fund; final payment overdue.

People v Charles A. Karam – MDEQ/OCI referral. Failure to obtain seawall construction permit. Warrant authorized. Pretrial on 9/4/08, 42-2. Plea reached; defendant paid \$250 to Lake and River Fund and to obtain after the fact permit from MDEQ.

People v Patrick J. Marlow – MDEQ/OCI referral. Unauthorized construction of seawall and improper dredging during seawall construction. Warrant authorized. Pretrial on 9/4/08, adjourned to 11/5/08, 42-2.

People v Kenneth Lerash – MCHD referral. Violation of County Health Regulations for failure to correct septic system. Pretrial 9/4/08, 42-2. Def failed to appear.

People v Gerard R. Koval – MCHD referral. Violation of County Health Regulations for failure to correct septic system. Pretrial 9/3/08, 41B. Defendant accepted plea agreement to correct violation by 9/30/08 and \$200.00 restitution to the Lake and River Fund. Pretrial on 10/15/08.

People v Daniel Williams – MASH/Marine Division referral. Water Pollution Violation and Dumping Oil from Boat. Warrant authorized. Pre-exam 8/14/08 adjourned for discovery. Preliminary Exam scheduled to 10/6/08, 42-2.

People v Scott A. Burnett – MASH referral. Knowing Release of Hazardous Substance, General violation of Liquid Industrial Waste and Improper Disposal of Used Oil. Warrant authorized – awaiting court date. 41B.

People v Liston – Marine Division referral. Water Pollution Violation, Violation of County Health Regulations and Watercraft Pollution violations. Warrant authorized 9/20.

MEETINGS ATTENDED ON BEHALF OF COUNTY:

9/5/08 – Blue Ribbon Commission

9/9/08 – Water Quality Board

9/19/08 – Macomb County Health Department

9/24/08-9/25/08 – US Areas of Concern Annual Meeting
9/26/08 – Clinton River Review 2008
9/29/08 – Michigan Department of Environmental Quality

Monthly Narrative: Assisted Township, Macomb County Health Department and local residents on issue regarding unapproved building materials in Harrison Township. Continued preparation for court proceedings on recent environmental cases. Continued work with MCHD to determine status of all outstanding SWIM team cases and developed actions for appropriate personnel. Continued work with Sheriff's Department regarding gasoline spill in preparation for warrant authorization request. Continued coverage at District Court/general criminal docket.

Future Plan: File civil complaint on behalf of the Health Department against CK Corporation for violations of Sewage Code. Continue enforcement of outstanding SWIM team cases. Continue to explore ways to facilitate transfer of cases to Environmental Prosecutor. Continue to pursue designation as Special Asst. Attorney General with AG's office. Personally meet with Macomb County police chiefs to encourage environmental awareness and enforcement. Meet with City/Township Attorneys to coordinate enforcement and promotion of environmental cases. Participate in educational programs to facilitate healthy lawn care. Continue research into appropriate agency authority over barges on LSC. Participate with fire department arson training regarding environmental crimes awareness.

Macomb County Health Dept/EHS Open Cases

09/22/08

Date Referred to Prosecutor	Civil Division/ Street	Violation	Referral Source	Issue/Status
3/28/05	Clinton Twp/ Cass Avenue	Section 3.1 & 3.4 Sewage Code	MCHD SWIM Team	Sanitary waste plumbed to storm drain discovered 1/03 through dye test. Complaint filed 12/05. Order of Consent Judgment issued 12/19/05. No compliance with Order. Letter to owner on 10/30/07 to pursue proper connection in order to avoid enforcement of Consent Order. Second letter to owner on 11/26 to contact Clinton Twp Water & Sewer Dept by 12/7 to avoid enforcement. Owner contacted Clinton Twp as directed. MCPO contacted by owner's attorney. Owner and/or attorney unresponsive. MCHD verifying alternative corrective action for property. MCHD setting up meeting with owner regarding corrective options
12/28/05	Fraser/ 14 Mile Rd	Section 3.1 & 3.4 Sewage Code	MCHD SWIM Team	Failing septic system. Complaint filed 9/1/06. Order to show cause 9/25/06 – no show. Bench warrant 9/06. Case dismissed by A. Jacklyn 6/13/07 - defendant allegedly complied with sewer connection/started work. MCHD confirmed that connection not made as of 10/24/07. House sold on 12/19/06 - no POS conducted because purchased through foreclosure. 30-day letter sent to new owner on 12/26/07; no compliance, formal citation sent by MCHD on 3/5/08. Enforcement letter sent 4/25/08, correction by 6/15/08; owner currently getting repair estimates; owner trying to get permission to tie into neighboring sanitary lines. MCPO in contact with City of Fraser for options.
2/15/06	Clinton Twp/ Elmway Rd	Section 3.1 & 3.4 Sewage Code	MCHD SWIM Team	Illicit connection. Property transferred to new owner who paid sewer tap and frontage fees. Enforcement letters sent to property owner. Connection to sanitary sewer allegedly begun as of 7/2/07 according to A. Jacklyn. Certificate of occupancy to be withheld until home is connected to sanitary sewer. No action until owner applies for Certificate of Occupancy from Building Dept.
7/15/04	Lenox Twp/ 31 Mile Rd	Section 3.1 & 3.4 Sewage Code	MCHD SWIM Team	Failing septic; citation 7/05; Consent Order 1/06 – repair to be complete by 6/06; no compliance; owner trying to get loan. Message left for owner to call Environmental Prosecutor on 10/31/07. No action by owner to date. Correspondence sent to owner on 1/8/08 to meet with MCHD and MCPO by 1/31/08 to develop schedule of compliance or enforce consent order. Agreement made on 1/24/08 with owner to complete repairs by 6/15/08 and to minimize water usage. Final enforcement letter sent by MCPO on 6/3/08 due to lack of cooperation. MCPO authorizing warrant. See Criminal Cases.
3/07	Clinton Twp/ Little Rd	Section 3.1 & 3.4 Sewage Code	MCHD SWIM Team	Malfunctioning septic system found 4/06. Citation 6/06. Hazard Abatement Affidavit necessary due to site conditions. Owner failed to pursue final permitting. Letter sent from MCPO to owner on 3/9/07 – no compliance. Correspondence sent to owner on 1/7/08 to meet with MCHD and MCPO regarding options. Agreement made on 1/24/08 with Owner to complete repairs by 6/15/08 and to minimize water usage. Correspondence to owner on 4/18/08 re: failure to comply with agreement – file civil or criminal complaint if no cooperation. MCPO authorizing warrant. See Criminal Cases.
	Chesterfield Twp/ Fairchild	Section 3.1 & 3.4 Sewage Code	MCHD SWIM Team	MCPO to manage file – house currently unoccupied; bank informed of standing violation. MCPO investigating procedures to notify buyers of standing violation.
8/14/07	Lenox	Section 3.1 & 3.4 Sewage Code	MCHD SWIM Team	Failing septic; wastewater is discharging to the roadside ditch. Owner has not responded to letters regarding alternate septic installation locations. Enforcement letter sent 8/23/07. MCHD confirmed that home owned by the bank; no active discharge; MCHD sent notification letter to bank of standing violation on 12/21/07. MCPO investigating procedures to notify buyers of standing violation.
4/2/08	Clinton Twp/North Ave	Section 3.1 & 3.4 Sewage Code	MCHD SWIM Team	Failing septic; citation to owner 3/20/08; sanitary available for connection; foreclosure proceedings in process – no enforcement of violation. MCPO investigating procedures to notify buyers of standing violation.

Macomb County Health Dept/EHS Open Cases

09/22/08

Date Referred to Prosecutor	Civil Division/ Street	Violation	Referral Source	Issue/Status
4/15/08	Warren/Van Dyke	Section 3.1 Sewage Code	MCHD SWIM Team	Discharge of sewage to storm drain; Notice of Violation from Warren 12/4/06; MCHD citation sent 3/7/08; no response from owner; letter from MCPO ordering correction by 6/9/08; Cease and Desist Order by City of Warren on 5/9/08 – returned undeliverable; owner verbally warned by MCPO on 7/8/08 to proceed with correction within one week or face escalation of enforcement. Water turned off by City of Warren on 7/17/08. Owner met with City of Warren to discuss repair options on 8/15/08. No resolution to date.
7/2/08	Shelby Twp/ Barclay	undetermined	MCHD SWIM Team	Complaint received by MCHD 5/08; dye test attempted 5/08 – no entry granted; two letters requesting access to dye test sent 5/08-6/08; case referred to MCPO 7/08. Letter sent 7/16/08 to schedule inspection by 7/23/08 or search warrant will be served. MCPO spoke to owner – house vacant since 6/2/08. No violation. MCHD to notify bank. MCPO investigating procedures to notify buyers of standing violation.
7/2/08	Lenox Twp/ Gratiot	Section 3.1, 3.4 & 3.6 Sewage Code	MCHD SWIM Team	Complaint received by MCHD 8/07; dye test confirmed illicit discharge 9/07; two violation letters sent by MCHD 9/07-11/07; order to connect to sanitary sewer sent by MCHD 1/08; Citation issued for lack of compliance 3/08; various contact with property owner 3/08-6/08; no progress on connection as of 6/08; case sent to MCPO 7/08. Letter to owner sent on 7/16/08 ordering connection by 8/15/08. Extension granted – owner petitioning to get property re assessed. MCPO monitoring progress.

Key: bold text indicates latest activity.

RECYCLABLE PAPER

RESOLUTION NO. _____

MEETING DATE: _____

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO: Receive and file the Surface Water Improvement and Monitoring (SWIM) Team report for August 2008.

INTRODUCED BY: Commissioner Philis DeSaele, Chairperson, Health Services Committee

The August 2008 Surface Water Improvement and Monitoring (SWIM) Team report summarizes surface water monitoring, bathing beach monitoring, investigatory and educational activities of the SWIM Team for the month of August 2008.

COMMITTEE/MEETING DATE

Health Services – October 2, 2008

**MACOMB COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH SERVICES DIVISION
SURFACE WATER IMPROVEMENT AND MONITORING "SWIM" TEAM
MONTHLY REPORT FOR AUGUST 2008**

Mission: Monitoring, educational, investigatory and enforcement activities toward achieving the goal of all Macomb County surface waters being in compliance with full body contact standards.

Surface Water Monitoring: 61 sampling locations were monitored this month for *E. coli* indicator bacteria. The monitoring for August indicates that 90% of the sampling locations show improvement over the historical August data. See the attached data summary.

Bathing Beach Monitoring: Monitoring for the 2008-bathing season resumed April 16, 2008 for Blossom Heath Beach and Memorial Park Beach in St. Clair Shores, Metropolitan Beach in Harrison Township, New Baltimore Beach in New Baltimore and the two inland beaches at Stony Creek Metropark in Washington Township. Beaches are monitored twice weekly for compliance with the Total Body Contact Standards contained in Part 125 of the Michigan Public Health Code (P.A. 368, 1978).

Monitoring for the Month of August 2008 (Beaches officially opened Memorial Weekend)

() No Closures at any Beaches.

(X) Closures at the following Beaches:

	<u>Days Closed</u>	<u>Yearly Total</u>
() New Baltimore Park	0	1
(X) Metro Beach Metro Park	1	2
(X) SCS Memorial Park	18	69
() SCS Blossom Heath Park	0	25
(X) Stony Creek Baypoint	1	3
() Stony Creek Eastwood	0	1

SWIM Team Investigations:

	<u>August 2008</u>	<u>Year-To-Date</u>
Investigations Initiated	23	131
Cases Referred to Prosecutors Office	0	10
Investigations Resolved	22	109
Open Cases Year to Date: 2008	22	
Open Cases from 2007	13	
Open Cases from 2006	8	
Open Cases from 2005	6	
Open Cases from 2004	3	
Open Cases from 2003	4	
Open Cases from 2002	0	
Open Cases from 2001	1	

*Investigations are initiated by citizen complaint, municipal referral or as an outcome of water quality monitoring results.

Education and Public Information:

A display focusing on septic systems, wells, water quality and household hazardous waste was set-up at the Armada Fair, which was held August 12-17, 2008. A Health Department representative was present to answer questions from the public.

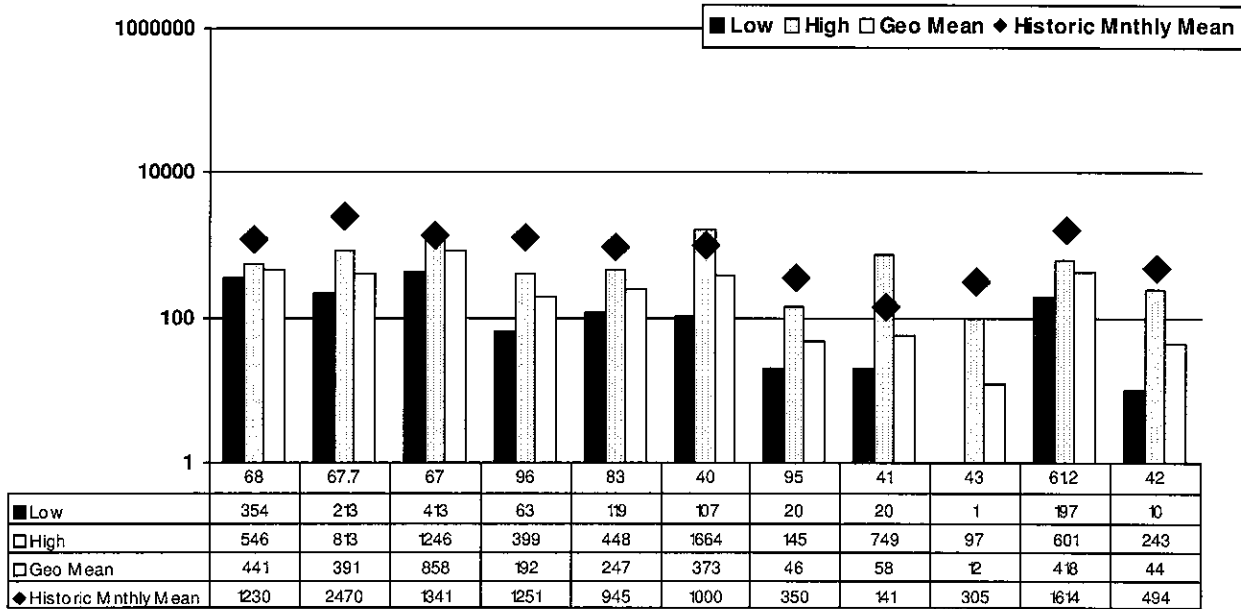
**MACOMB COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH SERVICES DIVISION
SURFACE WATER IMPROVEMENT AND MONITORING
"SWIM" TEAM
MONTHLY REPORT FOR AUGUST 2008**

SWIM TEAM INVESTIGATIONS

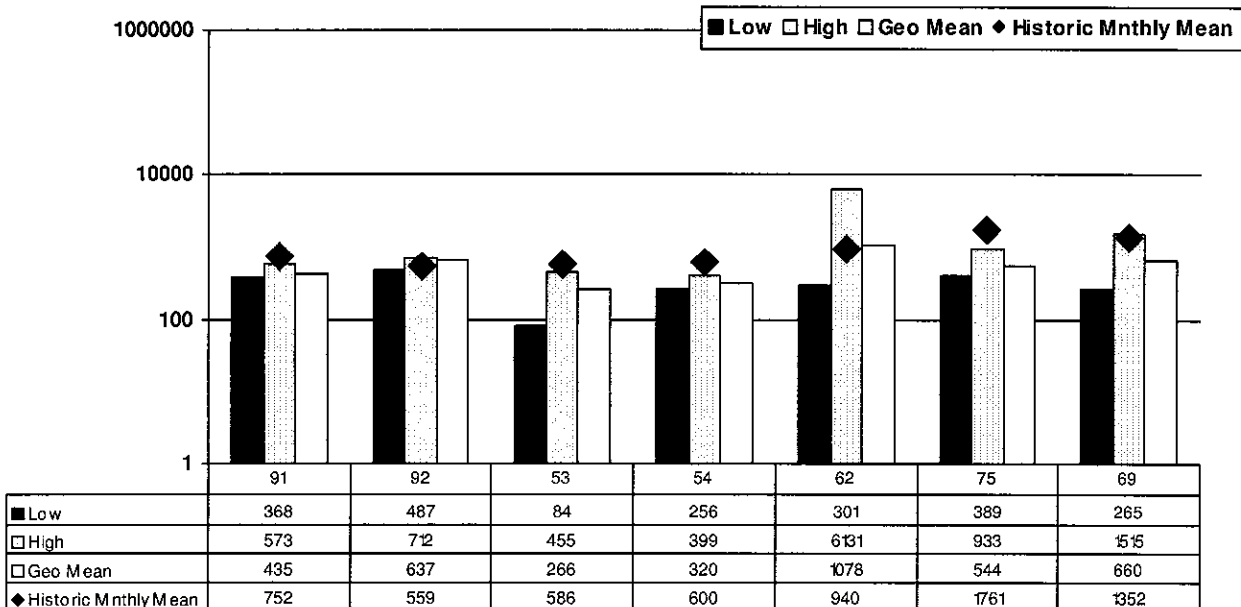
<u>Municipality</u>	<u>Aug-08 Investigations Initiated</u>	<u>Aug-08 Year To Date</u>
Armada TWP	0	0
Armada Village	0	1
Bruce	0	0
Center Line	0	0
Chesterfield	3	4
Clinton	8	22
Eastpointe	0	0
Fraser	0	0
Harrison	7	56
Lenox	1	2
Macomb	0	1
Memphis	0	0
Mt. Clemens	0	0
New Baltimore	0	1
New Haven	0	1
Ray	0	1
Richmond TWP	0	1
Richmond City	0	0
Romeo	0	1
Roseville	1	2
St. Clair Shores	0	2
Shelby	2	26
Sterling Heights	0	4
Utica	0	1
Warren	0	4
Washington	1	1
Total #	23	131

**Macomb County Health Department
Environmental Health Services Division
Monthly Compare Results
8/1/2008 -8/31/2008**

Clinton River Main Branch Watershed-EAST

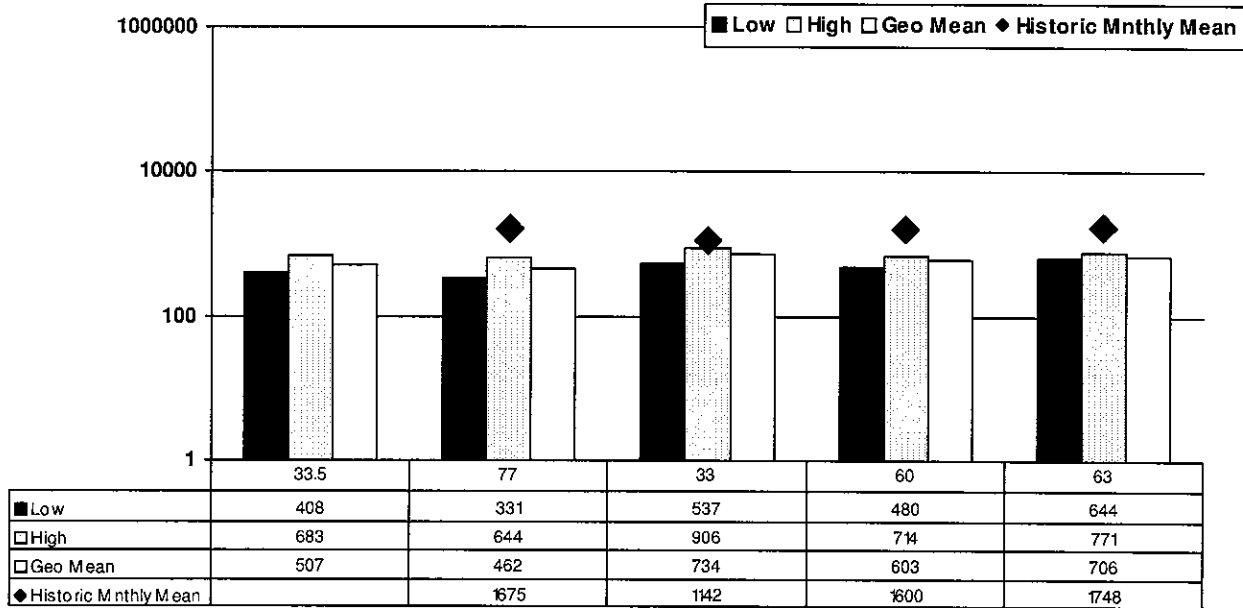


Clinton River Main Branch Watershed-WEST

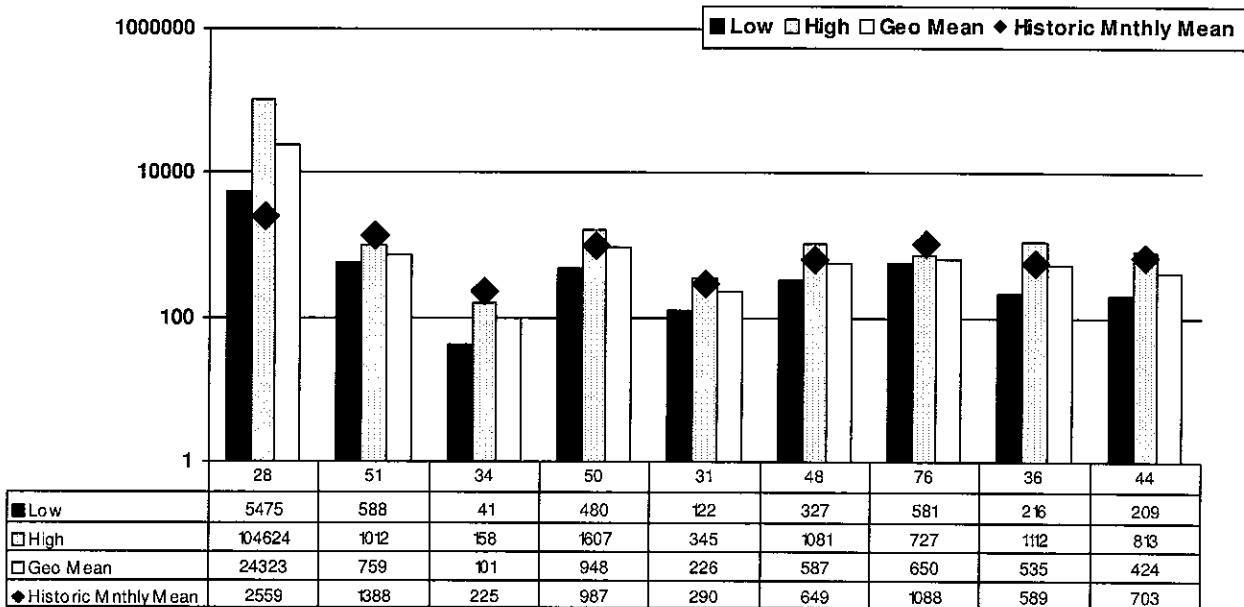


**Macomb County Health Department
Environmental Health Services Division
Monthly Compare Results
8/1/2008 -8/31/2008**

Clinton River Middle Branch Watershed

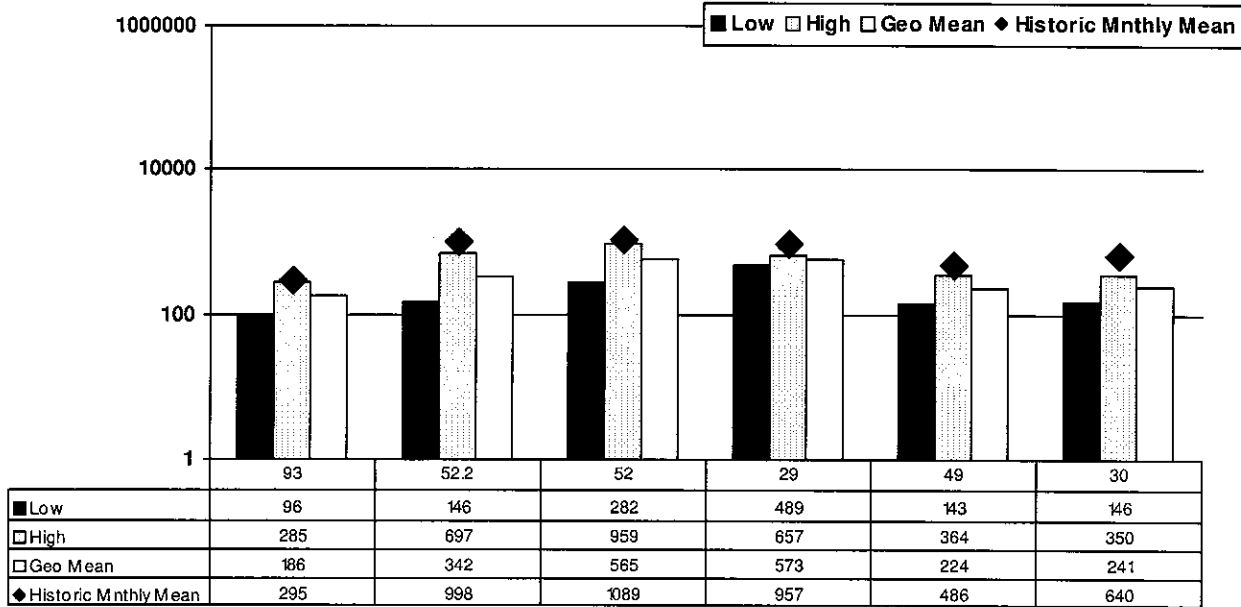


Clinton River North Branch Watershed-EAST

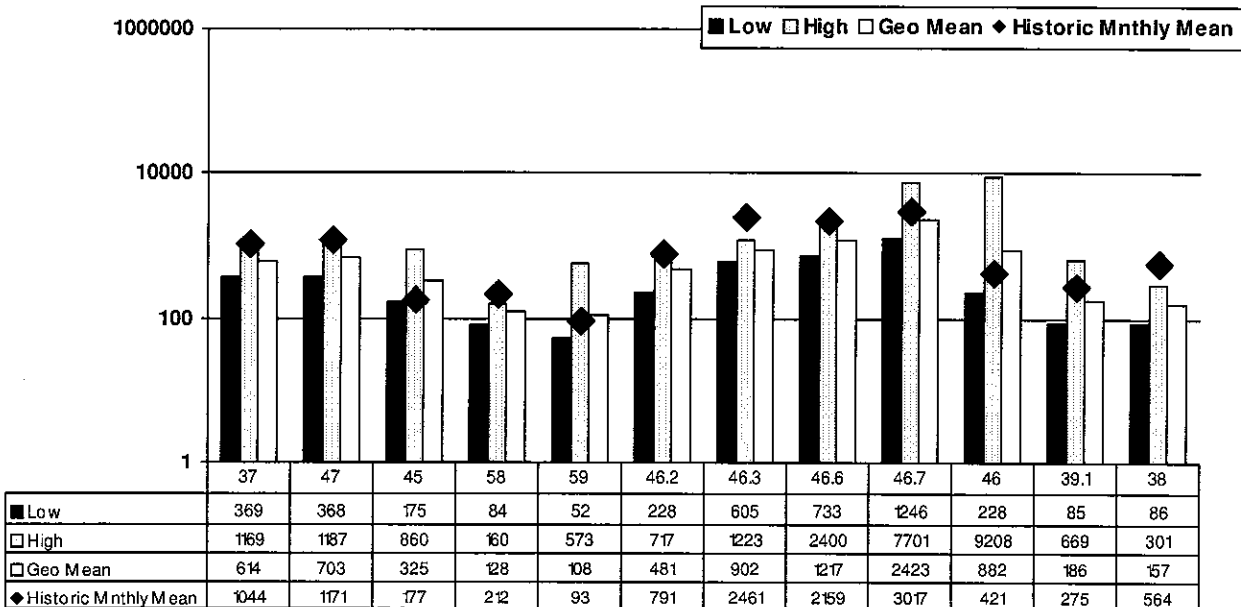


**Macomb County Health Department
Environmental Health Services Division
Monthly Compare Results
8/1/2008 -8/31/2008**

Clinton River North Branch Watershed-WEST

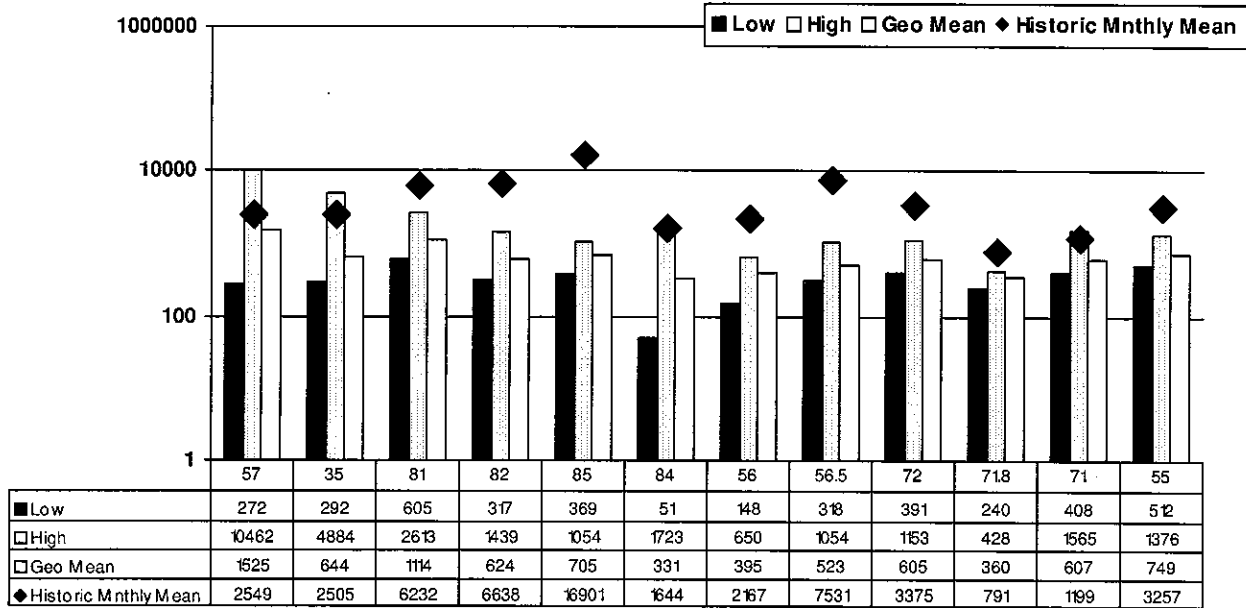


Other: Salt River, Milk River, Crapauo Creek



**Macomb County Health Department
Environmental Health Services Division
Monthly Compare Results
8/1/2008 -8/31/2008**

Red Run Drain/Bear Creek Watershed



**Macomb County Health Department
Environmental Health Services Division
Retention Basin/Combined Sewer/Sanitary Sewer Overflows
8/1/2008 through 8/31/2008**

Start	Start Time	End	End Time	Hours	Gallons	Receiving Water	Meets NPDES	Precipi- tation	Type
Total all locations					0				

5 HIGHEST *E. COLI* SURFACE WATER SAMPLING SITES
(August, 2008)

Sample #			Location	<i>E. coli</i> /100 mL (Geo Mean)
1	28	East Branch Coon Creek at Boardman Road		24,323
2	46.7	Crapeau Creek at Ashley Street		2,423
3	57	Red Run at Dequindre		1,525
4	46.6	Vanderbenne Drain at Fox Pointe		1,217
5	81	Bear Creek at Mound Road		1,114

**MACOMB COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH SERVICES DIVISION
SURFACE WATER IMPROVEMENT AND MONITORING "SWIM" TEAM
SURFACE WATER SAMPLING SITES**

Sample #	Location
Clinton River Main Branch Watershed - EAST	
68	Clinton River at Moravian Road Bridge
67.71	Sweeney Drain at 15 Mile Road
67	Harrington Drain at Harrington Road
96	Clinton River Spillway at Shadyside Park Bridge
83	Clinton River at Mt. Clemens YMCA Dock
40	Clinton River at I-94
95	Clinton River at Albatross Docks
41	Clinton River at DNR Site
43	Clinton River Spillway at the Weir
61.2	Clinton-Harrison Relief Drain at Shook Road
42	Clinton River Spillway at Jefferson Avenue
Clinton River Main Branch Watershed - WEST	
91	Stony Creek at Inwood Road
92	Stony Creek West Branch at Stony Creek Road
53	Clinton River at Dequindre Road
54	Clinton River at Auburn Road
62	Clinton River at Kleino Road
75	Clinton River at Garfield Road
69	Canal Drain at Clinton River Road
Clinton River Middle Branch Watershed	
33.5	Middle Branch Clinton River at Schoenherr Road
77	Healy Brook Drain at Romeo Plank Road
33	Middle Branch Clinton River at 25 Mile Road
60	Middle Branch Clinton River at 21 Mile Road
63	Middle Branch Clinton River at Heydenreich Road
Clinton River North Branch Watershed - EAST	
51	East Branch Coon Creek at North Avenue
34	Highbank Drain at 32 Mile Road
50	East Branch Coon Creek at 30 Mile Road
31	East Branch Coon Creek at 26 Mile Road
48	Deer Creek at North Avenue
76	McBride Drain at Card Road
36	North Branch Clinton River at 21 Mile Road
44	North Branch Clinton River at Little Street
28	East Branch Coon Creek at Boardman Road
Clinton River North Branch Watershed - WEST	
93	East Pond Creek at 33 Mile Road
52.2	East Pond Creek at M-53
52	East Pond Creek at Powell Street
29	North Branch Clinton River at Boardman Road
49	North Branch Clinton River at 29 Mile Road
30	North Branch Clinton River at 26 Mile Road

**MACOMB COUNTY HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH SERVICES DIVISION
SURFACE WATER IMPROVEMENT AND MONITORING "SWIM" TEAM
SURFACE WATER SAMPLING SITES**

Sample #

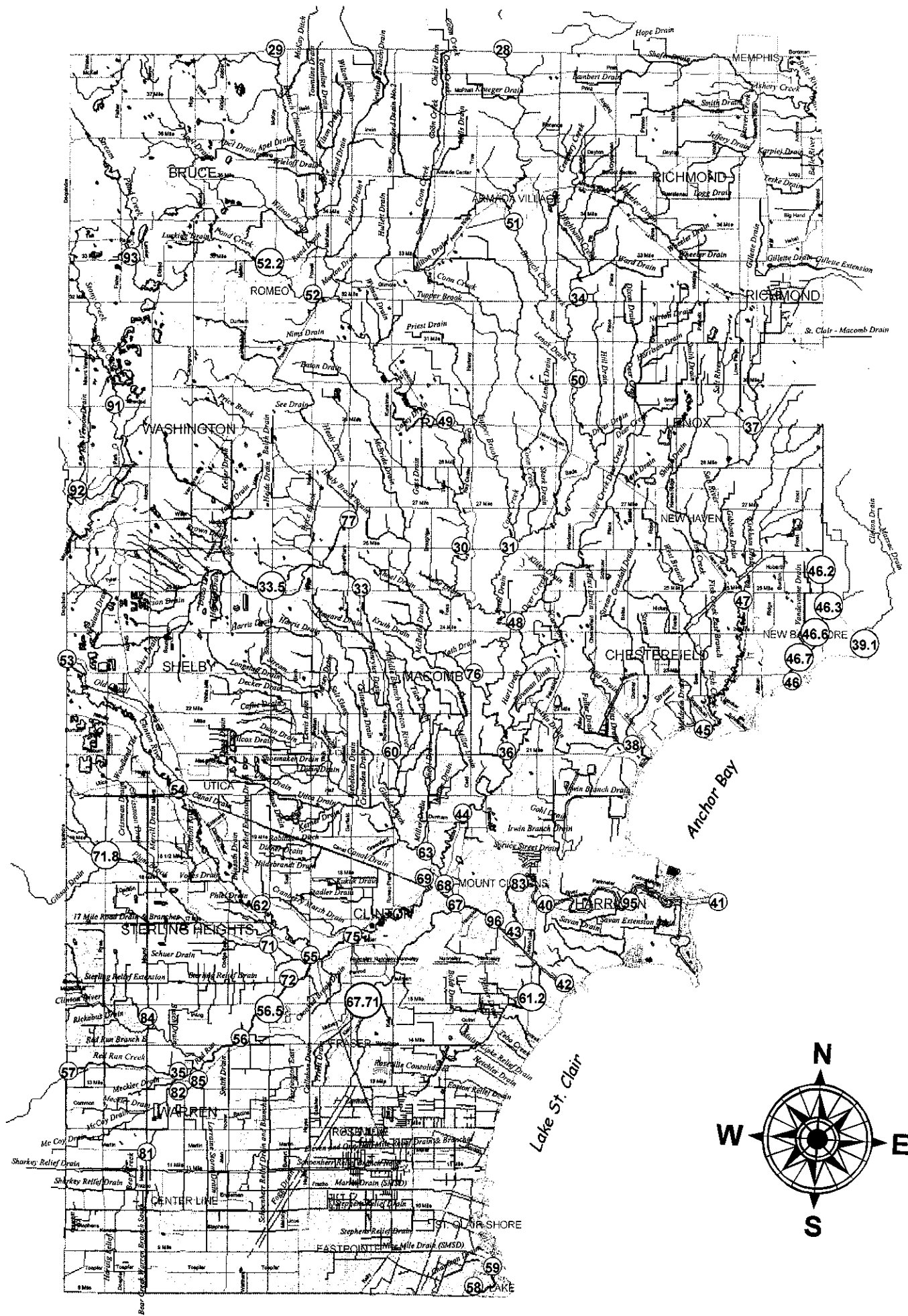
Location

Other: Salt River, Milk River, Crapeau Creek

37	Salt River at 29 Mile Road
47	Salt River at Washington Street
45	Salt River at Jefferson Avenue
58	Milk River at Alger Street
59	Milk River at Clairwood Street
46.2	County Line Road Drainage Ditch at Hobarth Road
46.3	Crapeau Creek at County Line Road
46.6	Vanderbenne Drain at Fox Point Street
46.7	Crapeau Creek at Ashley Street
46	Crapeau Creek at Main Street
39.1	Marsac Drain at M-29
38	River Voss at Jefferson Avenue

Red Run Drain/Bear Creek Watershed

57	Red Run Drain at Dequindre Road
35	Red Run Drain at Van Dyke Avenue
81	Bear Creek at Mound Road
82	Bear Creek at Old 13 Mile Road
85	Lorraine Drain at Bear Creek
84	Beaver Creek at Mound Road
56	Red Run Drain at 14 Mile Road
56.5	Schoenherr Relief Drain at Red Run Drain
72	Sterling Relief Drain behind Freedom Hill Park
71.8	Plumbrook Drain at Ryan Road
71	Plumbrook Drain at Schoenherr Road
55	Red Run Drain at Utica Road



RECYCLABLE PAPER

RESOLUTION NO. _____

MEETING DATE: _____

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO: Receive and file a progress report from Macomb County Animal Shelter

INTRODUCED BY: Commissioner Philis DeSaele, Chairperson, Health Services Committee

The latest activities at the Macomb County Animal Shelter will be discussed.

Health Services – October 2, 2008

RECYCLABLE PAPER

RESOLUTION NO. _____

FULL BOARD MEETING DATE: _____

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO _____ (see below)

INTRODUCED BY: from the Floor

At the Budget Committee meeting held on 09-23-08, the following action was taken during the review of Plan A, Schedule II:

WATERWAY CLEANUP:

The following **substitute motion** was made:

MOTION

A motion was made by Vosburg, supported by Camphous-Peterson, to keep the \$175,000 for waterway cleanup in the budget, but to change parameters in which money can be disbursed.

A **friendly amendment** by Commissioner Gielegghem was accepted as follows: "To **refer** this to the Health Services Committee."

The Motion Carried with Lund voting "No."

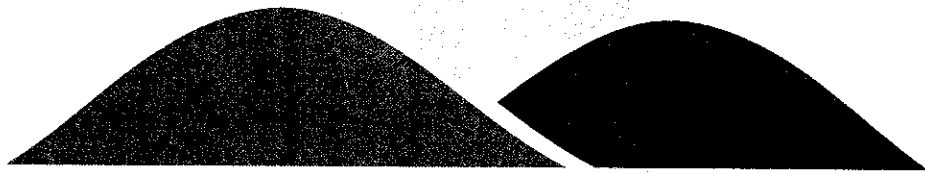
(Note: Attached is a copy of Plan A, Schedule II)

COMMITTEE/MEETING DATE

Health Services 10-2-08

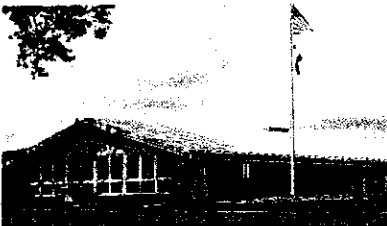
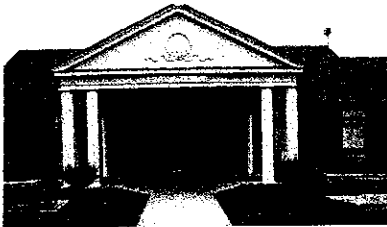
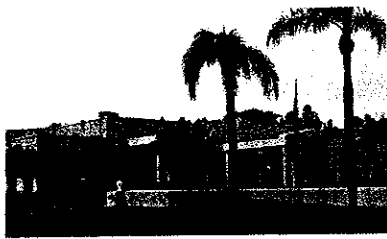
RECYCLABLE PAPER

TRADITIONS MANAGEMENT



New Views on Senior Living

Richard D. [illegible]
[illegible]



TRADITIONS MANAGEMENT
NEW VIEWS ON SENIOR LIVING

Experience the Difference



CARRINGTON PLACE

St. Pete Botetourt Wytheville
Tappahannock Muscatine Toledo

EAGLE LAKE

St. Petersburg

SPRINGFIELD RESIDENCES

Chestnut Hill

MONTGOMERY REHAB HOSPITAL & CENTER

Our residents come first...



Then we focus on our staff...



Our belief is that success will follow...





BEN ATKINS, MA, CNHA, CPHRM *President, Chief Executive Officer*

Mr. Atkins earned a Bachelor of Science and Master in Gerontology from the University of South Florida. He is a Certified Nursing Home Administrator and a Certified Professional in Healthcare Risk Management. He is licensed to practice in both Florida and Virginia. Mr. Atkins began his career as a Regional Accountant, responsible for four Assisted Living Facilities and two Skilled Nursing Homes. Next, Mr. Atkins supervised the operations of a 120 bed Skilled Nursing Home for Angel Care/Meadowbrook Healthcare. Interested in utilizing his entrepreneurial skills, he left this employer and co-founded and co-owned Total Rehab South, (TRS). He supervised operations, growing this company's revenues to more than three million dollars in one year. TRS was sold to In House Rehab, a company that was OTC-listed. After the company buyout, Mr. Atkins served as Vice President for one year. Then, Mr. Atkins opened Key Rehab Inc., Key LTC Management, and Independent Therapy Center. As the majority stockholder of these organizations, he directed operations in five states and held several appointments by the Florida Circuit Court as a Receiver. Currently, he is the CEO of Traditions Management, and the owner/operator of many Independent Living, Assisted Living and Skilled Nursing Facilities across the United States, as well as a hospital in Philadelphia, PA. Mr. Atkins continues to devote his time and professional talents to the advancement of the health care industry.



MARYA J. MORRISON *Chief Financial Officer*

Ms. Morrison earned her Bachelor in Accounting from the University of South Florida. Her impressive health care experience began in the Nursing Home industry in 1987 at Multicare Management Services in Hackensack, New Jersey. Ms. Morrison advanced quickly from a staff accountant to company controller. Her responsibilities included the financial supervision of twenty skilled nursing facilities. Subsequent to her departure Multicare Management became Genesis Healthcare, a publicly traded company with nursing homes throughout the United States. Ms. Morrison went on to served as Regional Director of Accounting for Southern Management Services, a large, prestigious Long -Term Care Company in Florida. Her expertise in reducing bad debt and implementing accounting systems has been a key to her success. As Director of Finance for another large private healthcare company, she managed the construction accounting and AIA forms for Independent Living, Assisted Living and Skilled Facilities. In addition, she supervised the day-to-day accounting operations of the company's twenty Assisted Living Facilities. Ms. Morrison is extremely knowledgeable in the areas of medical billing, cost reporting, budgeting, Managed Care and Medicare/Medicaid. Currently, she is Chief Financial Officer of Traditions Management, and the owner/operator of many Independent Living, Assisted Living and Skilled Facilities across the United States, as well as a hospital in Philadelphia, PA. Her professionalism and expertise in financial matters are highly respected throughout the health care industry.



ADAM GARFF *Vice President of Development*

Prior to joining Traditions Management, Mr. Garff worked for a regional healthcare development and investment firm. During that time, he assisted in the development and/or acquisition of twenty-five senior housing projects valued at more than one hundred million dollars, including the development of nine new nursing homes. Mr. Garff's eight years of real estate experience enhances his ability to recognize truly valuable market opportunities. He has broad experience in all aspects of healthcare development that includes: certificate of need procurement, site selection and entitlement, budgeting, financial modeling, project management and financing. Using his expertise in market analysis, which he gained from a Bachelor in Economics at Brigham Young University, as well as from many years of experience in analyzing real estate markets, Mr. Garff has developed a refined methodology that projects senior housing need for all levels of the retirement continuum. Mr. Garff is also held in high esteem in the health care industry for his ability to lead the way in targeting and executing key objectives that are necessary to grow a company and has been instrumental to the success of Traditions Management in this area. Currently, Mr. Garff is the Vice President of Development for Traditions Management, and the owner/operator of many Independent Living, Assisted Living and Skilled Facilities across the United States as well as a hospital in Philadelphia, PA. Mr. Garff is widely recognized for his ability to grow companies, to increase their market share, and to substantially contribute to the overall financial success of a business.



EUGENE RENSCH, RETIRED MSGT, USMC *Vice President of Ancillary Operations*

Mr. Rensch retired from the United States Marine Corp with twenty-three years of service. He has traveled the globe in more than eighty countries, by air, land, and sea. Retiring from his second tour as Senior Enlisted Aide to the Commander in Chief of United States Central Command, his awards include: Joint Service Commendation, two Navy Commendations, two Navy Marine Corps Achievements, Kuwait Liberation, Southwest Asia Service, Good Conduct with Silver and Bronze Star, Marine Corps Expeditionary, National Defense, Humanitarian, Sea Service Deployment with two Bronze Stars. Military duties also included Senior Aide to two former Commandants of the Marine Corps, Manpower and Reserve Affairs and the head of formal training to all General Officer Aides for all the Marine Corps. Mr. Rensch brings his many years of exemplary leadership and organizational skills to Traditions Management. His multicultural experiences enable him to understand the needs of seniors from all backgrounds and to assist in planning operational and outreach services within the communities. He has excellent skills in overall operations management. We are honored to have a man of such fine character as part of our team at Traditions Management.



JOSE SEDA *General Counsel*

Mr. Seda has represented insurance companies, financial institutions, healthcare providers, hospitals, and government agencies nationwide. Most recently, he served as an attorney with the United States Department of Homeland Security. Mr. Seda was a partner with a large national firm and counsel to a Wall Street firm. As a Professor of Law, Adjunct to the College of Law at Florida A&M University, Mr. Seda has taught numerous law courses in health care law and elder law. Over the years, Mr. Seda has also taught Medicaid fraud investigators, sworn law enforcement officers and college students. He has guest-lectured at law schools. Mr. Seda has served on numerous not-for-profit boards and professional associations, and has written and lectured on many topics. An example is "U.S. Supreme Court Decisions and The American with Disabilities Act", to

the international annual convention of the Association for the Advancement of Science, Denver, CO (2003) Another example is "Defensive Charting: Minimizing Frivolous Law Suits in the Nursing Home Health Care Setting through Proper Documentation Practice", to Pinellas County Association Director of Nursing Administration/Long Term Care, Inc., St. Petersburg, FL (2004) Yet another example is "HIPAA: Security Requirements" to the Society for Radiation Oncology Administrators, Conference in Orlando, FL (2005). Mr. Seda has a Juris Doctorate in Law from the University of Colorado, College of Law. In addition, Mr. Seda has a B.S. in Criminology from Florida State University, a Masters in Public Administration from the University of North Florida, and worked on a Ph.D in Public Administration and Management Science at Virginia Polytechnic Institute and State University. At Traditions Management, we rely on Mr. Seda for legal counsel regarding a wide variety of issues.



VICTOR GAMBONE JR., MD, FACP, CMD *Corporate Medical Director*

After establishing a private practice in Dunedin, Florida in 1978, Dr. Gambone served as Chairman of the Department of Internal Medicine and an Officer of the Medical Executive Committee of Morton Plant Mease Health Care. He was one of the first physicians in the nation to receive certification as a specialist in geriatric medicine. Dr. Gambone is also a Certified Medical Director (CMD) by the American Medical Directors Association. He is a Fellow in the American College of Physicians (FACP) and Diplomate of the American Board of Quality Assurance and Utilization Review Physicians. He has advised health insurers, nursing facilities, quality improvement organizations and home health agencies. In 2000, Dr. Gambone was appointed by the Secretary of Health to serve as medical expert for the Agency for Health Care Administration in the State of Florida. He presently serves as a medical

consultant for Medicare's Nursing Home Quality Initiative in Florida. Dr. Gambone is a member of numerous professional organizations. He is the immediate past president of the Florida Medical Directors Association. Dr. Gambone practices exclusively in the long-term care setting. He works collaboratively with Advanced Registered Nurse Practitioners (ARNP) in providing on-site medical services. Dr. Gambone is board certified in both Internal Medicine and Geriatric Medicine from the University of South Florida and is dedicated to serving the healthcare needs of the elderly population.



GERARD DAHILL, NHA, MHSA *Vice President of Operations*

Mr. Dahill has more than eighteen years of administrative experience in hospitals, assisted living, and skilled nursing facilities in New York, New Jersey, and Florida. He holds a Masters in Health Services Administration from the University of St. Francis in Joliet, Illinois, and has served as an Adjunct Professor in the field of Health Care Administration since 2003. A licensed Nursing Home Administrator in the State of Florida since 1996, Mr. Dahill brings a vast amount of administrative experience to Traditions Management and is knowledgeable in compliance issues that impact the operations of our facilities.



CYNTHIA CONKLE, RN, MBA *Vice President of Clinical Operations*

Ms. Conkle has more than thirty years of experience as a RN and has held various clinical nursing staff, supervisory, and management positions in intensive care, cardiac care, emergency care, home health care, blood banking, and long-term care. She has provided technical assistance to professional and product liability underwriters, healthcare facilities, and other healthcare providers. She has designed and implemented quality and risk management programs for state and medical associations, large physician groups, hospitals and nursing homes. Ms. Conkle has published many articles. In fact, her "Diagnosis Disaster!" project won an "Award of Excellence" from the Insurance Marketing Communications Association. She has served as a Board Member for the Florida Medical Malpractice Claims Council-West Coast and the Minnesota Society of Healthcare Risk Management. Ms. Conkle is

able to take complex risk and care issues and develop simplified, effective interventions to decrease risks and improve care. She received her RN degree from St. Joseph's Hospital School of Nursing and graduated from Leo College with a Bachelor of Arts in Psychology. She received an Associate in Risk Management designation from the Insurance Institute of America and an MBA from St. Leo University. Ms. Conkle is RAC-C by the American Association of Nurse Assessment Coordinators and is a Certified ALF Administrator in Florida. Also, she is a Licensed Healthcare Risk Manager in Florida.



GWENN SAN MARCO, NHA *Vice President of Operations*

Ms. San Marco earned a degree in Health Care Administration from St. Petersburg College. For ten years, she served as Executive Director of Brandon Health & Rehab in Brandon, Florida where she successfully managed the overall operations of this 120 bed facility. Ms San Marco's leadership skills translate into supervised facilities that exceed regulatory and operational standards and surpass revenue projections. A recipient of many professional awards, she currently serves as an American Health Care Association Quality Award Senior Examiner for Step One and Step Two. A past District President and Board member of the Florida Health Care Association, Ms San Marco presently serves on various committee organizations. She also served as President and Vice President for the City of St. Petersburg Office on Aging Committee. An outstanding contributor to the

health care industry, Ms San Marco's leadership and team building skills will ensure that our organization goals are met.

COMPREHENSIVE ACCOUNTING

- ▲ Skilled Nursing and Assisted Living Billing
- ▲ Accounts Receivable Collections
- ▲ Accounts Payable
- ▲ Cash Flow Analysis
- ▲ Balance Sheet
- ▲ Income Statement
- ▲ General Ledger and Analysis
- ▲ Cost Report Preparation
- ▲ HUD Requirement Filings
- ▲ Construction Management "AIA Documents"
- ▲ Payroll Processing
- ▲ Automated Time Clock and Scheduling
- ▲ Monthly Summary Reports
- ▲ Quarterly Summary Reports
- ▲ Annual Revenue and Expense Reporting



RISK MANAGEMENT

- ▲ Insurance Management
- ▲ Litigation Tracking And Management
- ▲ Loss Prevention Systems
- ▲ Resident And Family Grievance Policies

OPERATIONAL ENHANCEMENTS

- ▲ Daily Census Monitoring
- ▲ Daily Staffing Monitoring
- ▲ Monthly Facility Goal Setting
- ▲ Strategic Weekly Reviews
- ▲ Organizational Overviews
- ▲ Budgetary Compliance Standards
- ▲ Purchasing Alignments
- ▲ Revenue Growth Programs
- ▲ Inventory Tracking and Analysis



MARKETING & PUBLIC RELATIONS

- ▲ Quarterly Market Studies & Pricing Analysis
- ▲ Strategic Relationship Building
- ▲ Comprehensive Daily Controls
- ▲ Monthly Goal Incentive Plans
- ▲ Daily Result Reporting
- ▲ Long Range & Short Range Planning
- ▲ Out Of The Box Strategies
- ▲ Custom Team Building
- ▲ Customer Retention Strategies

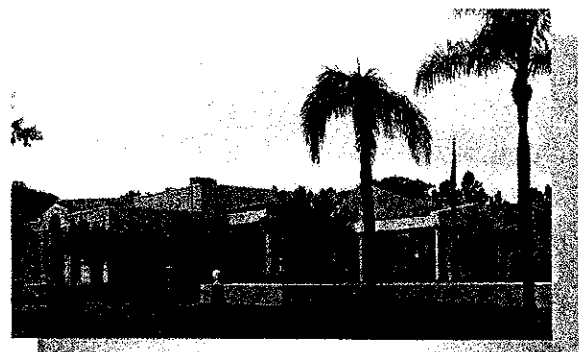


DEPARTMENTAL MANAGEMENT

- ▲ Food Service Price Control
- ▲ Menu Development
- ▲ Food Quality Enhancement
- ▲ Detailed Housekeeping Inspections
- ▲ Maintenance Preventative Reporting
- ▲ Resident Survey Systems
- ▲ Family And Friends Surveys
- ▲ Staff Survey Systems
- ▲ Union Prevention and Education
- ▲ Staff Seniority Programs

AREAS OF EXPERTISE

- ▲ 25 Years of Experience
- ▲ Skilled Nursing Facilities
- ▲ Retirement Communities
- ▲ Assisted Living Facilities
- ▲ Memory Impairment Facilities
- ▲ Hospitals
- ▲ Rehabilitation Centers
- ▲ Psychiatric Facilities
- ▲ Physician Practices



distributed
10-2-08



CIENA HEALTHCARE PROPOSAL FOR MARTHA T. BERRY FACILITY
October 2, 2008

Ciena Healthcare Management, Inc. submits the following non-binding proposal based on a preliminary and limited due diligence review of the Martha T. Berry Facility. Our approach delivers an optimal result that benefits the residents, employees and the County by substantially and immediately reducing the County's subsidy to operations while maintaining and continuing the care synonymous with Martha T. Berry. In general terms, Ciena proposes the following:

- Ciena¹ would assume operational and management responsibility of the facility for a period of 60 months in an arrangement similar to the contract Ciena currently has with Oakland County to operate and manage Oakland County's Golden Oaks nursing facility.
- Ciena would hire the employees of the facility at substantially similar rates of pay.
- Ciena would recognize and bargain with the current collective bargaining unit to negotiate a new union contract.
- Employees would receive similar health benefits and benefits.
- Ciena would provide employees with 401(k) retirement benefit consistent with industry standards.
- Ciena will assume any operating losses of the facility and be entitled to any profits of the facility, if any.
- Over the 60 month management period, Ciena would charge the County a fixed management fee equivalent to the aggregate projected losses of the facility in 2008 that the County would pay as a subsidy with payment of the fee spread out equally over the 60 month period. In other words, the County would only pay for one year of subsidies to fund operations for the next 5 years.
- At all times, the facility will continue to have 100% of its beds dually certified for Medicare and Medicaid participation and the facility will continue to care for the resident population it currently serves.
- At the end of the 60 month period, Ciena would enter into a lease agreement with the County to lease the facility at a fair market rental rate at which time the facility would become revenue producing to the County.
- No Certificate of Need will be necessary allowing for a quick execution of a contract and assumption of operation by Ciena as early as December, 1, 2008.

Respectfully Submitted,

Mohammad Qazi
President

David G. Stobb
General Counsel

¹ The operator/contracting party/employer will be a single purpose limited liability company that has a management contract with Ciena Healthcare Management, Inc.

BLUE PRINT FOR CHANGE

MARTHA T. BERRY MEDICAL CARE FACILITY

Members of the Macomb County Board of Commissioners

Attached is a document that has been prepared by the firm of Nantz, Litowich, Smith, Girard and Hamilton at the direction of the Social Services Board to provide a *Blue Print for Change* that will allow our Board to assume the Full Management Authority that is defined Public Act 280 of 1939 for the Martha T. Berry Medical Care Facility (MTB/MCF).

This blueprint outlines the major steps needed to change from the status quo to significantly reducing the County subsidy while allowing MTB/MCF to continue in its historical role as a unique public provider of long term care services to the most vulnerable and financially indigent residents of Macomb County. Included in the document is an explanation of Public Act 280 and how it defines the responsibilities of the Board of Commissioners and the Social Services Board. Also provided is a description of how the Public Employment Relations Act, PA 336 of 1947, defines the Social Services Board as the statutory employer for the employees at MTB/MCF.

The cornerstone of this *Blue Print for Change* is a **Joint Operating Agreement (JOA)** entered into by Macomb County, Social Services Board and the employees of MTB/MCF (represented by their collective bargaining representatives) – to work through the separation of MTB/MCF from the County. Major elements to be addressed would include, but are not limited to:

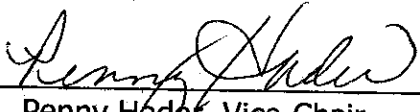
- Establishing new collective bargaining units at MTB
- Identification and analysis of benefits for the purpose of separating MTB employees from County employees
- Identification and analysis of potential savings from separating administrative functions now provided by the County that MTB would assume and either provide directly or purchase
- Resolution of new collective bargaining agreements with an agreed upon amount of labor cost reductions
- Identification of cost efficiencies in the daily operational overhead and agency purchase of service costs

Distributed
10-2-08

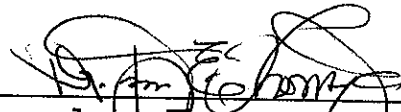
- Identification of potential increases in resident payment/third party insurance collections

The intended goal is that through the JOA process the Social Service Board will reduce the County subsidy to MTB/MCF to \$2,000,000 by the end of 2009 and \$1,000,000 by the end of 2010. We believe that this is doable, if all parties to the JOA work in good faith for the best interest of the residents served by the Facility. Further, we believe that ultimate financial independence is an achievable goal but, in the case of 24 of the 36 medical care facilities across Michigan, this was the result of a dedicated local millage. The Social Services Board recognizes that only the Macomb County Board of Commissioners has the authority to allow such a millage to be considered by the residents of the County.

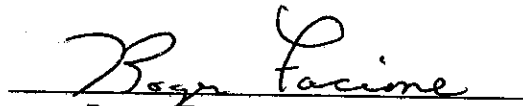
Through the JOA process over 24 months your Social Services Board is prepared to transform MTB/MCF restoring its economic independence while continuing the tradition of care that has been provided to the most vulnerable and financially indigent residents of our County. As we do so, future generations will have you to thank for your vision and commitment to the residents of Macomb County.



Penny Hader, Vice-Chair
Social Services Board



James Thompson, Member
Social Services Board



Roger Facione, Chairperson
Social Services Board

MEMORANDUM

TO: Roger Facione – Chairperson
Macomb County Human Services Board

FROM: Steven K. Girard: Nantz, Litowich, Smith, Girard & Hamilton

DATE: September 29, 2008

RE: Macomb County Human Services Board Issues Relating to Martha T. Berry Medical Care Facility

OUTLINE

- | | | |
|------|--|---------|
| I. | Overview of PA 280 | Page 3 |
| II. | Funding for County Medical Care Facilities | Page 7 |
| III. | County Commissioners' Responsibilities for Martha T. Berry | Page 9 |
| IV. | Blueprint for Change | Page 11 |

PREFACE

The purpose of this memorandum is to explore the possibility that the Macomb County Human Services Board would assume its delegated statutory control over the supervision and the administration of Martha T. Berry Medical Care Facility. The ultimate goal of this change from the status quo would be to significantly reduce or eliminate the County General Fund subsidy, and allow Martha T. Berry to continue its historical role as a unique provider of long term care services to the residents of Macomb County. Crucial to this analysis, is a proper understanding of Public Act 280 of 1939, and how it delegates

responsibility between the County Board of Commissioners and the Human Services Board for the operation of a county medical care facility.

By way of background, Martha T. Berry MCF is one of 36 county medical care facilities in the State of Michigan. Public Act 280 of 1939 established the statutory framework for the creation and operation of county medical care facilities. Under PA 280, Martha T. Berry has a statutory obligation to serve the poor of Macomb County. Unlike private nursing homes, county medical care facilities cannot selectively admit only private-pay patients or give preference to low-care residents as a way of maximizing revenues. As a result, Martha T. Berry's residents are generally sicker and require a higher level of care than those who reside in private nursing homes. Also as a consequence, Martha T. Berry receives a much higher percentage of its operating revenue from the Medicaid Program than its private counterparts. However, because of these statutory requirements, county medical care facilities receive a higher classification of Medicaid funding (at Class III level, rather than Class I), than private nursing homes.

At the outset, it is important to recognize that the current administration of Martha T. Berry by Macomb County is unique among the 36 county medical care facilities in the State. In the other counties that operate a County MCF, the county board of commissioners and the county administration have no role whatsoever in the day-to-day operation of the County MCF. Instead, the County MCF is administered completely by the three-person Human Services Board. The Human Services Board hires and fires the administrator of the MCF. The unionized employees of the MCF are in bargaining units composed only of MCF employees (no commingling with other county employees). Whether in the Michigan Employees Retirement System (MERS) or a separate county pension plan, the employees of the MCF are in separate groups under the plan. The MCF handles its own union negotiations, does its own payroll, human resources, risk management, information technology, building maintenance, billing, etc. or it contracts for these services with third parties.

The reason for this is found in Public Act 280 of 1939.

I. OVERVIEW OF PUBLIC ACT 280

Public Act 280 of 1939 is intended to protect the welfare of the people of the State of Michigan through a variety of social programs, primarily for those persons who because of their physical condition, age or income, cannot care for themselves. Among the many programs included under Public Act 280 are programs to assist the blind, children, the aged and the disabled. This statute has been amended on numerous occasions with the most recent amendments occurring, when the State of Michigan established the Department of Human Services to assume most of the responsibilities of the Department of Social Services (most recently called the "Family Independence Agency").

Most importantly, for purposes of this discussion, Public Act 280 of the Public Acts of 1939 provides the statutory framework for the creation and operation of county medical care facilities. Specifically, Section 58 of the Act provides that the Human Services Board is authorized *to supervise and be responsible for the operation of the county medical care facility* ("MCF"). MCL 400.58.

The Human Services Board is required to collect, from any available source, the cost of the care provided for residents at the county MCF. All of the monies received for the care of the residents at the county MCF must be deposited into the County's Social Welfare Fund. MCL 400.73(a). The county MCF is statutorily required to provide a program of planned and continuing medical treatment and nursing care under the general direction and supervision of the county MCF's medical director. MCL 400.58. All of the services provided at the county MCF are required to be consistent with the needs of those patients admitted and cared for at the county MCF and must be professionally supervised and provided on a continuing basis.

County medical care facilities are intended to care for persons who do not require major surgery, treatment for psychosis, treatment for tuberculosis, contagious disease or other specialized care. MCL 400.58(a). Specifically, the county MCF is primarily intended to care for persons who lack the financial resources to care for themselves, who are sixty-five (65) years of age or older

(including persons who evidence a general manifestation of senility without the presence of psychosis), or of a lesser age and who are blind, chronically ill or disabled. Id. Patients suffering from contagious diseases may be admitted as long as separate facilities are provided which have been approved by the state. A county medical care facility is required to accept any patient eligible for admission who has a domicile in the county or who is found by the state to reside in the county without a known domicile within the State of Michigan or a place of residence outside of the state to which that person may be returned, if the County Department of Human Services receives or has received state financial aid for capital expenditures related to the establishment, extension or improvement of the county MCF. MCL 400.58b.

Public Act 280 specifically provides for and describes the powers and duties of the Human Services Board. These duties include the following:

- (a) Supervision of and responsibility for the administration of the county medical care facility and child care institute;
- (b) Annual review of the social service programs operating within the county;
- (c) Development of policy and supervision of the administration of social service programs authorized by the Commissioners or financed solely from County funds or County administered funds;
- (d) Development and administration of employment programs and work training projects which are complimentary to and not in conflict with state programs;
- (e) Review and submission of recommendations on contracts involving programs administered by the Human Services Board, proposed to be entered into between the Human Services Board and public or private agencies within the county including proposed purchase of services contracts from applicant agencies eligible for funding under Title X of the Social Security Act;

- (f) Agent for the commissioners in the development of coordinated or consolidated approaches to the delivery of social services and cooperative service delivery arrangements between the Human Services Board and each public and private social service agency within the county;
- (g) Represent the commissioners in all negotiations between the county and the Human Services Board; and
- (h) Make annual policy recommendations to the Michigan County Social Services Association on annual departmental appropriations, priorities for utilization of Title XX funds, eligibility standards from general public relief and burial, employment programs, work training projects and other related issues.

MCL 400.45.

Each Human Services Board must have three members, two of whom are appointed by the county commissioners and a third member who is appointed by the State of Michigan. MCL 400.46. All members are subject to three (3) year terms and are required to be reimbursed for necessary travel and other expenses along with a salary deemed as appropriate by the commissioners. A member of the Human Services Board cannot serve as a Director of the County Department of Human Services nor can he/she be employed at the county MCF.

With respect to employee relations, the Human Services Board is authorized, by statute, to appoint an executive director (*i.e.*, administrator) for the county MCF and to employ such assistants and employees as is necessary to fulfill its statutory responsibilities. MCL 400.51. The administrator is required to be licensed by the State of Michigan. MCL 339.1901 *et seq.* Both the number of employees hired at the county MCF and their compensation is set by the Human Services Board and is paid from funds available to the county MCF and out of those monies included in the Social Welfare Fund. MCL 400.51.

With respect to who has the right to collectively bargain on behalf of a county medical care facility, it is clear under the Public Employment Relations Act, Public Act 336 of 1947, as amended by Act 379 of 1965, MCL 423.201 et seq. ("PERA"), that the Human Services Board is the statutory "employer" of the employees of the county medical care facility.

Under PERA, the general characteristics of an employer are that it selects and engages employees, it has the power of dismissal, it pays the wages of the employees, it has power and control over the employees' conduct, and it is a body corporate. Wayne County Federated Library System, 1979 MERC Lab Op 494; City of Grand Rapids, 1997 MERC Lab Op 358. These characteristics are all delegated by statute to a county Human Services Board with respect to employees of a county medical care facility. Indeed, most county medical care facilities receive no funding whatsoever from the county towards the operation of the County MCF. Obviously, this is not true in Macomb County as Martha T. Berry does receive a substantial appropriation from the County general fund.

The only court that has addressed this issue directly held that the Human Services Board, and not the county commissioners, is the statutory employer of the medical care facility employees.

In Hillsdale County Board of Commissioners and AFSCME v Hillsdale County Social Services Board, 84-14-180-CZ (1984) acting Circuit Court Judge Timms reviewed the Public Employees Relations Act for purposes of determining whether the county board of commissioners or the county social services board was the employer of employees at the county medical care facility. In holding that the social services board was the public employer of employees at the medical care facility, Judge Timms noted that the county board of social services (now Human Services Board) is a statutorily created, independent body authorized to do such acts as necessary to carry out its statutory obligations, and that its right to employ persons at the Facility was supported by both express and implied rights set forth by Public Act 280. As such, the Human Services Board was the proper party to bargain with employees at the medical care facility over the terms and conditions of employment for those persons.

II. FUNDING FOR COUNTY MEDICAL CARE FACILITIES

The county treasurer (the "treasurer") is designated as the custodian of all monies provided for use by the county department of social services. MCL 400.73(a). The treasurer is required to create and maintain a Social Welfare Fund and is required to deposit into that fund the following:

- (a) All monies raised by the county for the use of the Human Services Board;
- (b) All funds made available to the Human Services Board by the state and federal governments;
- (c) All funds and collections arising out of reimbursements to the Human Services Board; and
- (d) All funds made available to the Human Services Board from any other source, whatsoever.

MCL 400.73(a). All monies in the Social Welfare Fund must remain separate and apart from all other county funds and are not to be transferred to or commingled with any other funds of the county. MCL 400.73(a) (2). All monies in the Social Welfare Fund are to be used exclusively for carrying out purposes of Public Act 280.

Money in the Social Welfare Fund is to be disbursed only upon order of the Human Services Board, and requires the signature of a person or persons designated by the Human Services Board:

[A]ll monies of the Social Welfare Fund shall be disbursed by the order or warrant of the county department over the signature of a person or persons designated by the Human Services Board.

MCL 400.74. As such, it is clear that only the Human Services Board has the authority to spend money which has been placed into the Social Welfare Fund.

All county funds (if any) designated for use by the Facility are required to be kept in the Social Welfare Fund and not commingled with any other county assets. As stated by former Attorney General Kelley in a 1978 opinion:

"It is my opinion that funds appropriated or otherwise made available for operating that facility are for the use of the county department of social services within the meaning of that term in Section 73(a) *supra*, and must, therefore, be made a part of a Social Welfare Fund as well. There is no statutory authority for establishing a separate county fund for the medical care facility. The Social Welfare Fund established must be kept separate and apart from other county funds and must not be transferred to or commingled therewith."

1978 OAG 5352, August 11, 1978. In those instances where money should have been placed immediately into the Social Welfare Fund but instead found its way into the General Fund, the interest must accrue to the Social Welfare Fund and not to the General Fund of the county. This issue was resolved in 1956. The Attorney General noted that there was no prohibition upon the investment of these funds, as long as the *"interest from such certificates should accrue to the welfare fund and not to the general fund of the county."* 1955-56 OAG 2495, March 26, 1956.

The State of Michigan may pay for medical care that an individual receives at a county medical care facility, including the care of those persons who receive aid to the blind, aid to the disabled, aid to dependent children or old age assistance. Importantly, however, persons who are not eligible for these types of aid, and who are admitted to the Facility, may be charged for the cost of their care to the extent that their financial ability, as determined by the County Department of Human Services. Moreover, no poor person, as defined by statute, may be refused admittance to the Facility if there are then residing in the Facility, persons who are not senile and who are paying the total cost of their care. MCL 400.58b

With respect to capital expenditures for the establishment, extension or improvement of the Facility, there are specific requirements and obligations set

forth in Section 58b of Public Act 280. In those instances where a county decides to establish, extend or improve a medical care facility's physical plant, the legislature has provided a specific procedure for doing so with approval from the county board of commissioners. MCL 400.58b.

III. THE COUNTY COMMISSIONERS RESPONSIBILITIES AS THEY RELATE TO THE COUNTY HUMAN SERVICES BOARD AND MARTHA T. BERRY MEDICAL CARE FACILITY.

The County Commissioners' responsibilities under PA 280 for the county medical care facility are specifically enumerated:

- A. Selection of Board Members. The county commissioners appoint two of the three members of the Human Services Board.
 1. Term. Three (3) year terms.
 2. Eligibility. Individuals holding elective office are not eligible for service on the Human Services Board. Board members must be residents of the county. A member of the County Board of Commissioners cannot serve as a member of the county's Human Services Board on any term, including the filling of a vacancy to complete a term.
 3. Reimbursement. Board members are entitled to reimbursement of necessary travel and other expenses incurred in the course of the performance of their duties.
 4. Compensation. Board members are also entitled to a salary as deemed appropriate by the commissioners. The compensation level set for the members of the Human Services Board may not be decreased during their term of office.

- B. Approval of Remodeling and Modifications to the Medical Care Facility. With respect to capital expenditures for the establishment, extension or improvement of a medical care facility, there are specific requirements and obligations set forth by Public Act 280.
1. The county Human Services Board, with the approval of the county board of commissioners will make an application to the State and a showing of need that it is able to meet all of the capital expenses of a county medical care facility.
 2. To defray the cost of construction to the establishment or extension of a medical care facility, the board of commissioners may raise, in any one year, a sum not exceeding .1 mill of each dollar of assessed valuation of the county. This tax will be regarded as a special tax collected in the same manner as other county charges, and monies received shall be transmitted to the treasurer of the county who shall deposit the same in a special construction fund to be used solely for that purpose.
 3. Money expended for construction in the establishment or extension of a facility shall be paid out by the county treasurer on the order of the county Human Services Board. Op. Atty. Gen., August 11, 1978, No. 5352.
 4. Only the County may create a building fund for a medical care facility. Reimbursements received for the care of its residents may not be placed in this fund.
- C. Ownership of the Medical Care Facility. The county medical care facility is owned by and remains the property of the Macomb County Board of Commissioners. The County Commissioners retain the right to close or sell the Facility if they believe that the same is in the best interests of the residents of the County.

- D. Full Faith and Credit. To the extent that existing funds are not otherwise available to satisfy any judgment or debt of a medical care facility, the County would ultimately be responsible for any unpaid portion.
- E. Role of the County Treasurer. Under Public Act 280, the county treasurer is designated as the custodian of all monies provided for the use of the county Department of Human Services. The treasurer is required to create and maintain a Social Welfare Fund.
- F. MCF Millage. The County Board of Commissioners must approve any millage to be used for capital improvements or operations of the county MCF.

IV. BLUEPRINT FOR CHANGE

As is evident, the statutory model of the Human Services Board under PA 280 does not currently exist in Macomb County. However, most of the other County MCFs share a trait Martha T. Berry does not: financial independence. Most of these facilities receive no subsidy from the county and rely for their revenue on a combination of fee for services (primarily Medicaid, Medicare and private pay), and a county operating millage. Indeed, 24 of the 36 county MCFs have a dedicated millage used to support the county MCF. Limitations on the use of the millage funds are varied among the facilities. Some of the facilities are limited to using the millage funds for bond payments and capital improvements. Some of the facilities are limited to using the millage funds to pay the county Maintenance of Effort payment (see Appendix A for a discussion of Maintenance of Effort). Most of the MCFs with a millage may use the funds to support the operations of the Facility. Some facilities may use the millage funds for all of these enumerated purposes.

Of the 36 county MCFs, only 4 (including Martha T. Berry) receive a county appropriation. However, they are quite small in comparison: Allegan, \$144,192; Barry, \$50,000; Emmet, \$210,000.

As noted briefly above, in the County MCFs outside of Macomb County, the Human Services Board is the policy-making board which oversees the operations of the county MCF. In addition to the long term nursing services provided, these Boards enjoy autonomy in the following areas:

1. **Administrator of Martha T. Berry.** Responsibility for interviewing (in conformity with Open Meetings Act requirements) applicants for Administrator of Martha T. Berry; Determining the qualifications for the Administrator; Selection of Administrator; Responsibility for entering employment contract with Administrator; Determine salary and benefits of Administrator; Evaluation of Administrator; Approval of Administrator expenses; Termination of Administrator's employment.
2. **Personnel Administration.** Approval of all personnel policies, including Employee Handbooks for Martha T. Berry staff; Right to sign severance or departure agreements for employees; Right to set qualifications for any employee of the Facility; Right to set hiring policies for employees; The right to determine all matters of management policy; The right to determine the size of the work force; The right to establish new job classifications, to reorganize or combine jobs and/or departments; The right to determine to layoff or reduce staff; The right to use outside assistance, leased or temporary employees, or subcontract (as allowed by union contracts, if any).
3. **Union Negotiations.** Selection of negotiating team for Facility for collective bargaining with any unions representing Facility employees in bargaining units consisting of *only* MCF employees; Right to approve or reject any collective bargaining agreement with any union representing employees of Martha T. Berry.
4. **Wages and Benefits.** Right to set salaries and fringe benefits for all Martha T. Berry employees.

5. **Administration.** Responsibility for payroll, accounting, human resources, risk management, benefit administration, building and grounds maintenance, billing, collection, information technology, and other administrative services.

A significant impediment to transitioning the above listed functions to the Human Services Board is the current composition of the union bargaining units in Macomb County. In addition to the non-union employees of Martha T. Berry, employees are found in five separate bargaining units:

1. **AFSCME.** The American Federation of State, County, and Municipal Employees Union, Local 411 represents the largest unit of Macomb County employees. This unit includes non-supervisory employees in nineteen different County departments, including the majority of non-supervisory employees of Martha T. Berry (nurse aides, laundry, housekeeping, dietary, etc.).
2. **UAW.** The UAW, Local 889, represents a large unit of employees of the County. This unit includes clerical employees in seventeen different departments, including one employee (the assistant to the administrator) employed at Martha T. Berry.
3. **UAW.** The UAW, Local 412, represents a bargaining unit composed of the supervisors of the County. This unit includes supervisory employees in nineteen different County departments, including the majority of supervisory employees of Martha T. Berry.
4. **SEIU.** The Service Employees International Union represents a bargaining unit limited to the LPNs employed at the Martha T. Berry MCF. No other LPNs employed by the County are included in this unit.
5. **MNA.** The Michigan Nurses Association represents a bargaining unit limited to the RNs employed at the Martha T. Berry MCF. No other RNs employed by the County are included in this unit.

No other County MCF has mixed units of MCF employees and other county employees. In fact, all the above unions represent employee groups at the other county MCFs. Our office has handled multiple organizing efforts by these unions over the last 30 years, and these unions have routinely sought bargaining units composed only of the MCF employees. It is questionable whether the Michigan Employment Relations Commission would approve of such a mixed unit in a representation case, were either party to object. Currently, AFSCME represents single units at MCFs in the following counties: Barry, Benzie, Pinecrest (Delta, Dickenson, Menominee), Gogebic, Hillsdale, Houghton, Ingham, Iron, Isabella, Marquette, Muskegon, Schoolcraft, Shiawassee, and Tuscola. SEIU represents single units (either the general non-supervisory unit or a unit of LPNs) at the following MCFs: Calhoun, Charlevoix, Pinecrest, Gogebic, Huron, Iron, Lenawee, Manistee, Muskegon, Newaygo, and Oceana. The UAW represents bargaining units at the Ingham County MCF. The MNA represents employees at the Gogebic MCF. Other unions representing units at MCFs across the State include the Steelworkers, Teamsters, and Operating Engineers. None of these unions have ever sought a mixed unit of employees at the MCF and the County.

It would be our recommendation that the three Macomb County units of mixed MCF and County employees be "clarified" to exclude the Martha T. Berry employees and that new units, composed only of Martha T. Berry employees be created. This unit clarification procedure can be done in one of two ways. First, the County could file a "unit clarification" petition with the Michigan Employment Relations Commission (MERC). The MERC has exclusive jurisdiction over the composition of bargaining units. If a party files a unit clarification petition, a hearing will be held and MERC can decide to clarify the unit, even if one party does not agree. There are many legal, practical and timing difficulties associated with the filing of such petitions, but is the only way to clarify or modify a bargaining unit, absent agreement of the parties.

The second, and our recommended method, is voluntary agreement of the parties. The parties are free to mutually agree to modification of the bargaining units. Assuming neither party objects, MERC is not involved in the process. In order for this transfer of authority to the Human Services Board to

be successful, the unions representing the employees of the Facility must become partners in the process. The unions must be willing to voluntarily agree to revise the bargaining unit composition and to have the Human Services Board designated on the Contracts as the Employer. The filing of a unit clarification petition seeks to revise the unit without the Union's consent. In our opinion, that approach would be directly contrary to what is necessary to make this transfer a success. In fact, for its part, the Human Services Board should be willing to guarantee to the unions up front that it will recognize them as representatives of the various employee groups, and adopt their collective bargaining agreements with whatever changes the parties are able to mutually agree to, in order to reduce personnel costs.

Another significant issue that would need to be addressed is segregation of MCF employees for fringe benefit purposes, and attention to potential legacy costs such as pension and retiree health issues. With respect to pension benefits, at other county MCFs, the employees are either in MERS or a single county retirement plan. The MCF employees are in separate groups under such plans (typically each union bargaining unit is a separate group), and their costs are computed based on their group. The MCF then pays its annual contribution to the plan as actuarially required (in addition to any employee contributions). The parties will need to discuss and reach agreement on multiple issues involving these funds.

Likewise, a major liability (likely unfunded) is retiree health care. This is not a problem at other county MCFs, as I am aware of only one other MCF that offers any retiree health care benefit (Bay County MCF). However, the union contracts currently provide for a fully paid retiree health benefit for the employee and spouse. The Human Services Board will need to carefully analyze the current and future cost of this benefit.

As also noted above, the other county MCFs provide for their own administrative services. These services include labor relations, legal counsel, payroll, human resources, risk management, information technology, building maintenance, billing, etc. The Human Services Board will need to carefully analyze the cost of such services, and reach agreement with the County on

which services are more cost effective to bring in-house, or contract with third parties.

The above issues are only some of the difficult issues that would need to be addressed to make this transition successful. We would recommend the following outline of how this process could be designed to meet all of the stakeholder's goals. We envision three primary parties to this process: Macomb County, the Human Services Board, and the employees (represented by their collective bargaining representatives). All parties would have to agree on all issues and expend whatever energy would be necessary to complete this separation. As an initial matter, it will be necessary to identify all potential tasks needed to begin this process. These tasks include:

1. The design of new collective bargaining units at both the County and the Facility, as discussed above.
2. Identification of all current benefits and the initial feasibility of segregating Facility employees from County employees for benefit purposes. Special attention will have to be given to all potential legacy costs such as health benefits and retirement benefits as discussed above.
3. Analyze and identify current costs and opportunities for reduction of costs. The collective bargaining representatives involved will have to be agreeable to beginning this process at the outset. Absolutely necessary will be a meeting with all of the collective bargaining representatives to have a frank and free exchange concerning the necessity of these changes and the collective bargaining representatives' willingness to engage in this process.
4. Identification of cost efficiencies in the daily operational overhead and agency purchase of service costs.
5. Identification of potential increases in resident payment/third party insurance collections.

6. Once the parties have all agreed on the basic outline concerning the separation of the Facility from the County, a "joint operating agreement" should be outlined. This joint operating agreement would enumerate the broad goals of the parties and specific goals to be achieved under the broad goals. In addition, a procedure for unwinding the joint operating agreement should be integrated into the agreement in the event the parties fail to complete the process of separation. The following general concepts would likely be integrated into the Agreement:
- a. All parties agree that the Human Services Board will be the employer of all employees at the Facility.
 - b. The County of Macomb retains ownership of all assets of the Facility.
 - c. The parties agree to modify all current collective bargaining agreements at the County to create both new units at the County and new units at the Facility with the goal of segregating Facility employees from County employees.
 - d. The parties agree to analyze and separate where possible all benefits and employment policies so that employees of the Facility are in separate groups for benefit purposes.
 - e. The parties agree to some continuation of County subsidy, or agree to seek and obtain a millage to fund the Facility.
 - f. The parties agree to analyze all potential savings from separating administrative purchase of services now provided by the County.

g. The Human Services Board and the collective bargaining representatives will meet to resolve new collective bargaining agreements reducing labor costs by an agreed upon amount.

h. In the event that each of the specific goals are not achieved, the joint operating agreement would terminate and all of the above actions would return to the prior status quo. The parties would recognize that this arrangement gives each party effective veto power over the agreement.

i. The Agreement will need to recognize that some level of transitional funding from the County would be necessary.

It would be clearly understood by the parties that unless the parties were able to reach agreement on all points, no action will be taken under the Joint Operating Agreement and all parties would return to the position they were in prior to the creation of the Joint Operating Agreement.

CONCLUSION

You have advised me that the Macomb County Human Services Board believes the sale or closure of Martha T. Berry would result in reduced options for our elderly population, lower standards of care for the residents, and loss of jobs, benefits, and opportunities for its employees. In addition, with any sale to a private entity, the Facility would lose its higher classification of Medicaid funding. The above discussion is offered as another option to sale or closure. With a partnership of the County, the Human Services Board, and the Unions representing the MCF's employees, a measured transition to the traditional PA 280 form of MCF oversight could restore the economic independence of Martha T. Berry and ensure its tradition of care and service will be continued for the next generation of Macomb County residents.

APPENDIX A

DISCUSSION OF MAINTENANCE OF EFFORT

Prior to 1978, long-term care facilities were reimbursed for the costs associated with patient care on a patient day basis within certain ceilings and/or limitations. County medical care facilities were allowed up to an additional forty percent (40%) adjustment for those costs which exceeded that limit. These adjustments were termed retrospective since these adjustments were computed following the determination of the reimbursement ceilings. In July of 1978, the State of Michigan implemented a prospective reimbursement system. This system determined, in advance, the *per diem* rates which remained fixed and were not subject to change for the rate setting. Adjustments were made in subsequent years by the Department of Social Services using an estimate of inflation. This methodology for adjusting rates was termed a "rate based" scheme.

Subsequent regulations mandated by the Federal Health Care Financing Administration found that the introduction of this new reimbursement system by the State of Michigan required that the state Medicaid reimbursement system be reasonably related to costs. This method of achieving the Health Care Financing Administration's mandate became known as "rebasings". Rebasings involved the adjustment of each facility's actual cost for a three (3) year period, by the appropriate nursing home cost factor adjustment. Following the rebasing, the facility rates would be determined as the rebased rate increased by the nursing home cost factor.

Subsequently, it became apparent that the process of rebasing the costs resulted in substantial increases in Medicaid expenditures because long-term care reimbursement rates did not cover the full cost of resident care. Subsequently, the State of Michigan directed the counties to maintain their previous levels of participation in operating long-term care facilities and imposed certain financial responsibilities upon county governments for any shortfall in the reimbursement rate.

The legislative mandate was accomplished by establishing the "Maintenance of Effort" provision of Public Act 391 of 1980. Under this statute, each county's maintenance of effort responsibility was equal to ninety percent (90%) of the difference between the actual facility cost and the state reimbursement rate for the year immediately prior to the "rebasings", updated by current dollars as determined by the nursing home cost factor. County Maintenance of Effort obligations are limited to the difference between the facility's "rebased" rate and the rate it would have received in the absence of "rebasings". All Maintenance of Effort obligations are the responsibility of the counties and are paid directly to the State of Michigan.

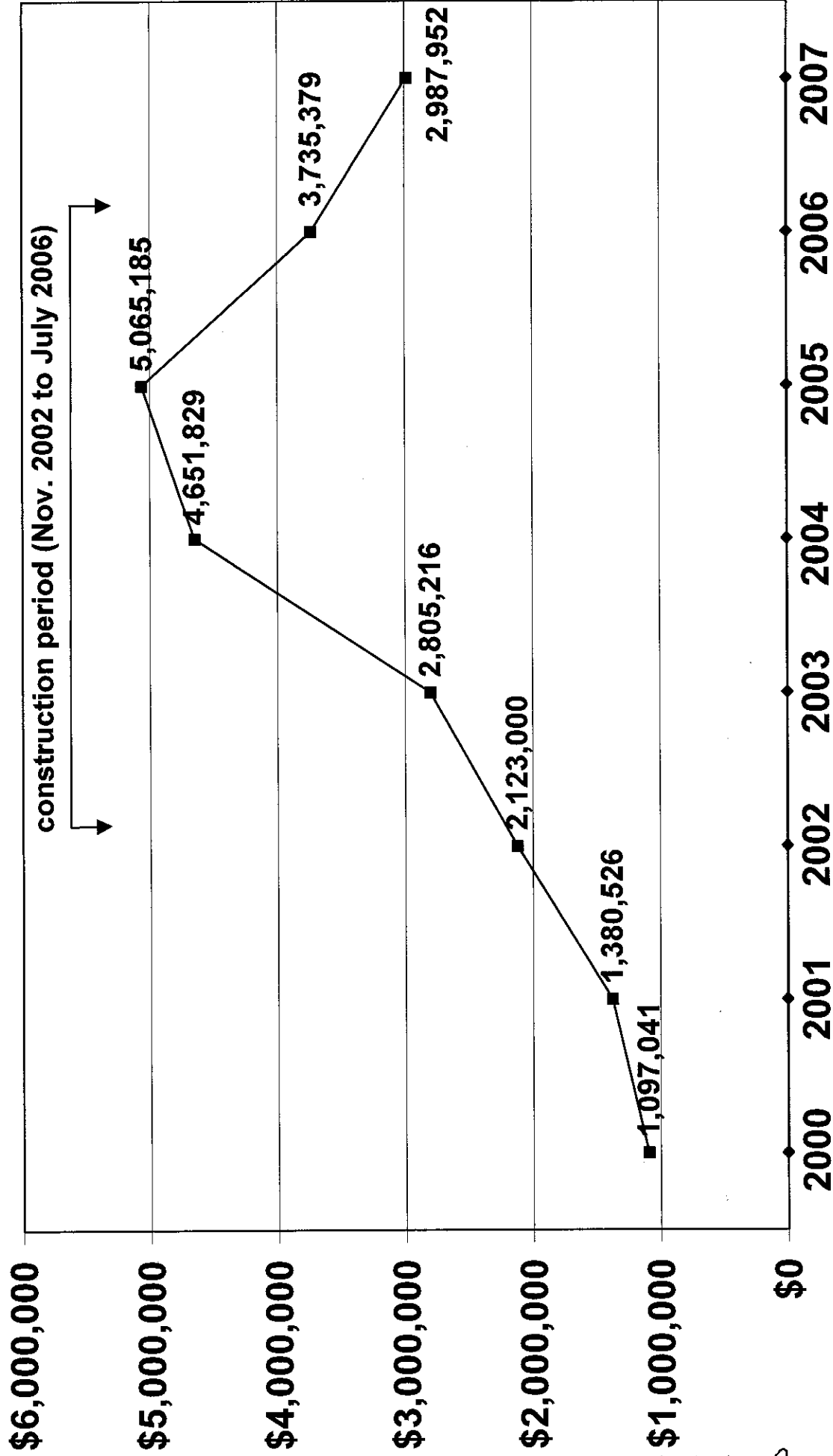
The Maintenance of Effort provisions of Public Act 391 have been modified several times to extend the limitations on the Maintenance of Effort level. In 1984, Public Act 408 was approved,

thus resulting in modifications to the formula for calculation of Maintenance of Effort rates. The Maintenance of Effort process in its present form can be illustrated by the following:

Maintenance of Effort is 45% of the difference between the for-profit/not-for-profit sector as a whole, at the actual cost of any given medical care facility. If, for example, the industry rate average was \$80 per day and the medical care facility was \$100 per day, 45% of the \$20 differential or \$9, would become the Facility's Maintenance of Effort. The County would thus be required to pay the \$9 per day as its Maintenance of Effort, to the state for the purpose of match up funds available under the federal Medicaid program.

Maintenance of Effort payments have been frozen by the legislature for several years. In some counties, the Maintenance of Effort obligations are paid through a county millage, or paid directly by the county by allocation of sufficient funds out of its general fund. In the majority of counties, the County MCF pays the full MOE out of its own funds.

COUNTY CONTRIBUTION



2007 county contribution includes net loss amount on return

distributed 10-2-08